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CHAPTER 7

PROJECT ACTIVITIES

I. OVERVIEW

This Chapter provides more detailed information and guidance related to the eligible HOME activities each Grantee could conduct to provide decent, safe, and sanitary housing for low- and very low-income persons. **Eligible project activities** include **acquisition** of rental housing, land, manufactured housing and assistance to homebuyers, **new construction** of homeowner and rental housing, reconstruction, or moderate or substantial **rehabilitation** of rental and owner-occupied housing and **tenant-based rental assistance**, including security deposits. Secondary eligible activities include relocation, site improvements, and demolition. Section II, GENERAL REQUIREMENTS, covers broad topics that apply to most project activities. Section III, SPECIFIC REQUIREMENTS, provides information on requirements specifically related to each project activity type.

II. GENERAL REQUIREMENTS

A. MAXIMUM AND MINIMUM ASSISTANCE

Part I of **Exhibit 7-A** (*Maximum Per Unit Subsidy Limits*) lists maximum HOME subsidy limits that apply to all rental housing and homeownership projects. These are the maximum amounts of HOME funds that can be invested in HOME-assisted units. The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is \$1,000 times the number of HOME-assisted units in the project. For tenant-based rental assistance, the minimum limitation does not apply. However, the maximum subsidy for tenant-based rental assistance may not exceed the difference between the monthly area rent standard and thirty percent of the tenant's adjusted monthly income.

B. PROPERTY STANDARDS

1. Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, and zoning ordinances.

In the absence of a local code for new construction or rehabilitation, one of the following codes must be used: Uniform Building Code (ICBO), National Building Code (BOCA), Standard Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

All other HOME-assisted housing must meet Section 8 Housing Quality Standards and lead-based paint requirements. To aid in meeting lead-based paint and HQS requirements, the HOME Program has developed a “Housing Inspection Form” (**Exhibit 7-B**). The form can be used for the initial and final inspection for owner-occupied housing rehabilitation projects and the pre-inspection for homebuyer assistance. **The form is NOT a replacement or substitute for the required appraisal form.**

All housing occupied by tenants receiving HOME tenant-based rental assistance (TBRA) must meet the housing quality standards in 24 CFR 982.401.

Housing must meet the accessibility requirements specified in the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

2. Additional property standard requirements apply to housing for homeownership to be rehabilitated after transfer of ownership interest. Before transfer of the homeownership interest, the Grantee must:

- ☒ inspect the housing for any defects that pose a danger to health;
- ☒ notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be corrected and applicable property standards met;
- ☒ ensure the housing is free from all noted health and safety defects before occupancy and not later than 6 months after the transfer; and
- ☒ ensure the housing will meet applicable property standards in paragraph B.1 of this section not later than 2 years after transfer of the ownership interest.

1. Provisions of the *Fire Administration Authorization Act of 1992* (PL 102-522) require that *all housing units* assisted with federal funds be equipped with a hard-wired or battery-operated smoke detector that includes appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises. This requirement applies to all new construction, reconstruction, and rehabilitation projects on any multi-family or single-family housing assisted with HOME funds. Further, where alarms already exist in common areas, visual and sensory alarms should be provided also, as a reasonable accommodation to persons with disabilities. The Act also levies additional requirements on newly constructed and rehabilitated multifamily properties of four or more stories¹. If your project involves a property of four or more stories, contact your HOME Program Officer immediately.

¹ For detailed guidance on fire alarms and automatic sprinklers, contact the HOME Program for the *Guide for the Implementation of PL 102-522 for Fire Alarms and Automatic Sprinkler Installations*, prepared for HUD by the National Institute of Standards and Technology (NIST)

4. Each HOME Grantee must provide written standards for rehabilitation projects. The Grantee must meet, at a minimum, the applicable property standards documents referenced earlier. Grantees are strongly encouraged to adopt the documents as part of their Management Plan.
5. The Grantee's project files must contain documentation that housing meets property standards of 24 CFR §92.251 and the lead-based paint requirements of 24 CFR §92.355 upon project completion.
6. Records must also show that owners of rental housing assisted with HOME funds maintain the housing in compliance with the property standards for the duration of the affordability period.

All HOME-assisted housing must meet Accessibility requirements of 24 CFR 5.105(a), including the Fair Housing Act and Section 504.

SUMMARY OF MINIMUM PROPERTY STANDARDS REQUIREMENTS, BY PROJECT TYPE

| | Rehabilitation | New Construction | Acquisition only | Acquisition when Rehab is required | TBRA |
|---|--|------------------|--|--|------|
| HQS | | | X | X | X |
| Local Codes If no local codes, then must follow: UBC, BDCA, SBCC or CABO or MPS | For all health and safety deficiencies in the property | X | Those applicable at time of initial construction | Free from health & safety defect not later than 6 months after transfer | |
| Local Ordinances | X | X | | Must meet relevant standards no later than 2 yrs after transfer of ownership | |
| Local Zoning | X | X | | | |
| Rehab Standards | X | | | | |
| Model Energy Code | X | X | | | |

Site and Neighborhood Standards (24 CFR §92.202) apply only to New Construction Rental Housing Projects. (See page 7-7 of this chapter for more details.)

C. PERIOD OF AFFORDABILITY

The term "affordability" relates to the cost of housing both at initial occupancy and over established timeframes. Affordability requirements vary depending on the HOME activity and the amount of HOME dollars invested per unit.

1. For **new construction or acquisition of newly constructed housing**, the minimum period of affordability is **20 years**.
2. For **rehabilitation, acquisition of existing housing or homebuyer assistance**, the period of affordability depends upon the amount of HOME funds invested:

- ☐ If **under \$15,000** of HOME funds are spent per unit, the minimum period of affordability is **5 years**;
 - ☐ If **\$15,000 to \$40,000** of HOME funds are spent per unit, the minimum period of affordability is **10 years**; and
 - ☐ If **over \$40,000** of HOME funds is spent per unit, the minimum period of affordability is **15 years**.
3. There is no period of affordability attached to Tenant-Based Rental Assistance. The assistance can be provided for up to two years (see Specific Requirements of this chapter.) Limiting the maximum subsidy to the applicable fair market rents for Montana ensures affordability.

Affordability is discussed further in the **SPECIFIC REQUIREMENTS** section of this chapter.

D. MANUFACTURED HOUSING (excluding Modular Housing)

For HOME purposes, HUD has a specific definition for manufactured homes as well as specific requirements in order to be eligible for assistance with HOME funds. Experience has shown that frequent problems have arisen when attempts have been made to rehabilitate mobile homes. Similarly, significant problems have arisen when families are relocated to older mobile homes. The HOME Program encourages extra care and analysis when contemplating applications involving manufactured homes. Consideration of other alternatives, such as relocation to a conventional “stick-built” home in standard condition, purchase of modular housing, as well as down payment assistance, should be carefully evaluated. These alternatives may prove to be far more cost-effective in the end.

HOME funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located. At the time of project completion, manufactured housing that is rehabilitated with HOME funds must:

- ☒ be connected to permanent utility hook-ups;
- ☒ be located on land that is owned by the manufactured housing unit owner or on land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability; and
- ☒ be on a foundation that meets local and State standards for this type of unit.

E. SPECIAL NEEDS

Permanent housing for disabled homeless persons, group or transitional housing and single-room occupancy housing are included as eligible project activities in the Montana HOME Program. Some distinguishing characteristics are discussed below.

1. Group housing is housing occupied by two or more single persons or families consisting of common space and/or facilities for group use by the occupants of the units, and (except in the case of shared one bedroom units) separate private space

for each family. It also includes group housing for elderly or disabled persons. These structures are usually large single-family units that are being used for this purpose. Grantees may choose to consider the housing unit as a single unit for HOME assistance purposes or, depending upon their size, choose to classify them as single room occupancy (SRO) units. The maximum HOME subsidy amount will differ according to whether the housing unit is classified as a group home or an SRO.

A group home is considered a one-unit project. A one-unit project consists of separate bedrooms, which may be shared, and shared kitchen, dining, sanitary and/or other common area facilities. All occupants of single-unit HOME-assisted projects, except supportive service providers, must be low-income.

The entire project is considered a single unit for determination of the maximum HOME subsidy limit. The subsidy limit is based on the number of bedrooms in the unit (See Part I of **Exhibit 7-A**). Bedrooms occupied by resident supportive service providers are counted as eligible bedrooms for subsidy purposes.

Depending on the size of the project, Grantees may wish to meet the standards for a SRO project by the installation of either or both sanitary or food preparation facilities. Doing this would create individual units, thereby increasing the number of units that may be assisted with HOME funds.

2. Single room occupancy (SRO) is housing consisting of single room dwelling units that are the primary residence of the occupant or occupants. The unit is required to contain either food preparation or sanitary facilities (it may contain both) only if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. Supportive services may be provided. SROs do not include facilities for students. All occupants of HOME-assisted units must be low-income. Rents and income targeting are discussed later in the chapter.

In no event may the maximum subsidy exceed the actual development cost of the HOME-assisted units based upon their proportionate share of the total development cost. Common area rehabilitation costs may be covered in the same proportion or percentage as HOME-assisted units in the project. For example, if five out of ten units in the structure(s) are HOME-assisted, HOME funds may be used to cover one-half the common area rehabilitation costs.

F. DOCUMENTATION AND CERTIFICATION

Project and Program files must be maintained by the Grantee and will be monitored by HOME Program staff. Files will include major documents that pertain to the entire program. The Grantee's Management Plan for administering its HOME program will be in this file, along with applications for HOME assistance. The **Project** files will include documents pertaining to each family or unit assisted. Each file will include the agreement between the

Grantee and the assisted family, and copies of all work write-ups, contracts, permits, and inspection reports.

G. CONFLICT OF INTEREST

HOME Program participants may have possible conflicts of interest, either individually or in connection with a family member or relative, that precludes them from participating in the program. A local governing body may request an exception to a conflict of interest, but *only after complete disclosure of the nature of the conflict at an advertised public hearing held for that purpose.*

HUD may grant an exception on a case-by-case basis after the Grantee's attorney has issued an opinion that the interest for which the exception is sought would not violate federal, state, or local law. HUD will review the information concerning disclosure, public hearing, and attorney's(s') opinion(s). Please note, this approval process may be very slow.

Grantees who believe they may have a potential conflict of interest must contact their HOME Program Officer for further guidance.

III. SPECIFIC REQUIREMENTS

A. NEW CONSTRUCTION

New construction will lead to the creation of rental housing or homeowner housing. Newly constructed housing units must meet applicable new construction standards of the area and the Model Energy Code (published by the Council of American Building Officials), and local laws and standards. When constructing 12 or more units in a project, federal labor standards including Davis-Bacon wage requirements also apply (see **Chapter 4** for additional information).

The purchase price, and a certified appraised value of the homeowner-assisted property (after new construction), must not exceed the FHA 203(b) limit for the area for the HOME-assisted property. (See Part II of **Exhibit 7-A, Maximum Mortgage Limits**).

With regard to site and neighborhood standards, proposed sites for new rental construction units must be suitable from the standpoint of facilitating and furthering full compliance with applicable provisions of Title VI of the *Civil Rights Act of 1964*, Title VIII of the *Civil Rights Act of 1968* (the *Fair Housing Act*), and *Executive Order 11063* (discrimination prevention). Proposed sites for new rental construction units must promote greater choice of housing opportunities for low- and very low-income persons. Proposed new rental construction sites must not be located in an area of minority concentration, and sites must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

Refer to the *Management Plan Template* (**Exhibit 14 of the HOME Application Guidelines**) for additional requirements related to New Construction and Rental Projects.

B. TENANT-BASED RENTAL ASSISTANCE

HOME rental assistance must be tenant-based, not project based. Like the Section 8 Housing Choice Voucher Program, tenants must be free to use their assistance in any eligible unit. The tenant-based rental assistance may be provided through an assistance contract to the owner who leases a unit to an assisted family, or directly to the family. Grantees may require that tenants use their tenant-based assistance only within their area of jurisdiction, or they may authorize tenants to use the assistance outside the Grantee's jurisdiction.

Grantees must select families in accordance with written selection policies and criteria that are consistent with the following:

1. TENANT SELECTION

Written tenant selection policies and criteria must include:

- ☐ Policy that TBRA may only be provided to low- and very low-income families
- ☐ Local preference for individuals with Special Needs (*optional*)
- ☐ Family does not need to meet the written tenant selection policy and criteria, if the family currently resides in a unit that is designated for rehabilitation or acquisition under the HOME Program (*optional*)

2. INCOME DETERMINATION

HOME funds used for tenant-based rental assistance must meet the following requirements regarding income targeting and tenant eligibility:

- ☒ at least 90% of the families assisted must have an annual income that does not exceed 60% of area median income;
- ☒ the remaining 10% of HOME funds can be used to assist families that are above 60% but no higher than 80% (low income), of area median income.

3. INCOME ELIGIBILITY/VERIFICATION

The Grantee must determine the income and eligibility of all proposed beneficiaries before the TBRA contract is signed.

Grantees will utilize the Section 8 definition of income for income eligibility purposes. Contact your HOME Program Officer for the *Technical Guide for Determining Income and Allowances for the HOME Program*.

Exhibit 7-D, (*HUD HOME Income Limits*), includes income limits for various sizes of families earning very low income (50% of area median) and low-income (80% of area median) for the different cities and counties in Montana. HUD revises the

income limits annually; contact your HOME Program Officer to determine if you have the latest income limits for the HOME program.

The incomes of tenants receiving rental assistance must be recertified at least annually, with certification documents maintained in the Grantee's files. Each assisted family will constitute a separate project for certification and documentation purposes. If a participating tenant's income goes above HOME Program income limits at recertification, assistance must be terminated.

4. ELIGIBLE UNITS

The Grantee must establish occupancy standards that will be used to determine the unit size (i.e., number of bedrooms) that TBRA families of various sizes and composition will be permitted to occupy. At the time a family is approved for TBRA, they should be counseled regarding the size of the unit for which approved, whether they will be permitted to select a unit that is larger or smaller than the approved unit size, and what the consequences of such a decision will be with respect to their monthly contribution toward rent. The Grantee may refer the TBRA family to suitable units; however, the Grantee must inform the family that it is not obligated to select a referral unit.

Rental units are selected by the tenant and:

- ☐ may be owned by the Grantee, a Public Housing Authority or another public entity or be privately owned housing;
- ☐ may include units developed or rehabilitated with HOME assistance;
- ☐ may be transitional housing units, if the lease terms meet the minimum lease requirements;
- ☐ must not be units receiving public or Tribally-Designated Housing Entity (TDHE) assistance, any Section 8 rent subsidies, or any other Federal, State or local subsidy that provides a duplicate subsidy to the HOME TBRA recipient or the unit which they propose to rent; and
- ☐ if part of a cooperative, must be rented from the owner of the cooperative unit. HOME TBRA cannot be used to pay cooperative shares if the cooperative membership is considered ownership under HOME.

In conjunction with the annual reexamination of income, the Grantee must reexamine the TBRA family's size and composition to determine whether its circumstances have changed. Depending upon the occupancy requirements established by the Grantee, a family whose size or composition has changed might be required to find a unit that is suitable to its current circumstances.

Housing occupied by a family receiving TBRA must meet Section 8 Housing Quality Standards (HQS). The Grantee must inspect units selected by families receiving TBRA to determine whether they meet HQS before authorizing their initial rental and, thereafter, must inspect the units annually. The owner must maintain the

premises in compliance with all applicable housing quality standards and local code requirements throughout the period of the TBRA family's occupancy.

5. MAXIMUM SUBSIDY

- ☒ The amount of the monthly assistance that a Grantee may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size for the area and 30 percent of the family's monthly adjusted income.
- ☒ A minimum tenant contribution for rent must be established.
- ☒ The rent standard for a unit size must be based on local market conditions.
- ☒ The TBRA units must rent for a reasonable amount, compared to rents charged for comparable unassisted units. Maximum subsidy amounts under the HOME Grantee's program are found in **Exhibit 7-E, HOME Program Rents**. The maximum subsidy allowed is the Fair Market Rent (FMR) applicable to the area for the number of bedrooms. (If using Fair Market Rents as the rent standard, please contact the HOME Program for the applicable FMRs).

Two sample forms are provided (see **Exhibit 7-F**, Part I, *Summary of Family Income Data* and Part II, *Calculating Adjusted Income*), which outline an example of how to calculate tenant contributions for rent. HUD has now included an ***Income & Allowances Calculator*** on their website that can be used. The calculator is an interactive tool that simplifies the determination of income eligibility and assistance amounts for applicants to HUD programs. The address for this site is:

<http://www.hud.gov/offices/cpd/affordablehousing/training/calculator/calculator.cfm>

Rent subsidy contracts cannot exceed 24 months, but they may be renewed, subject to the availability of HOME funds. Rent contracts are subject to the following conditions regarding start-up and termination:

- ☐ The term of the rental assistance contract must begin on the first day of the term of the lease;
 - ☐ For a rental assistance contract between a Grantee and an owner (landlord), the term of the contract must terminate on termination of the lease;
 - ☐ For a rental assistance contract between a Grantee and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.
- a. Security Deposits. Grantees may use HOME funds provided for tenant-based rental assistance to provide loans or grants to low- and very low-income families for security deposits for rental of dwelling units, whether or not the Grantee provides any other tenant-based rental assistance. The amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month's rent for the unit. Only the prospective tenant may

apply for HOME security deposit assistance, although the Grantee may pay the funds directly to the tenant or to the landlord.

- b. Protection for Tenants. When the HOME rental assistance contract expires, tenants selected from the Public Housing Authority's Waiting List must be returned to that List at the position from which they were taken so that they qualify for the same tenant selection preferences as when they were selected for HOME assistance.

Grantees must use a lease or rental agreement consistent with the following tenant and participant protections:

- ☐ The lease cannot be less than one year (unless mutually agreed).
- ☐ Prohibited Lease Terms – The lease may **not** contain the following provisions:
 - a) Agreement to be sued (tenant agrees to be sued, admits guilt, etc. prior to any judgment or lawsuit brought by the rental owner);
 - b) Treatment of property (tenant cannot agree to have personal property sold without notice; does not concern disposition of personal property left behind in unit after tenant moves out);
 - c) Agreement that tenant will not hold owner legally responsible for anything;
 - d) Agreement of tenant that owner may institute lawsuit without notifying tenant;
 - e) Agreement that tenant waives legal proceedings if unlawfully evicted;
 - f) Agreement by tenant to waive right to a trial by jury;
 - g) Agreement by tenant to waive right to appeal a court decision in connection to the lease; or
 - h) Agreement by tenant to pay attorney fees or legal costs even if tenant wins a legal proceeding.
- ☐ A Grantee may not terminate tenancy or refuse to renew lease except for:
 - a) serious or repeated violation of terms and conditions of lease
 - b) violation of applicable Federal, State, or local law;
 - c) completion of transitional housing tenancy period; or
 - d) for other good cause.

Written notice specifying the grounds for termination or refusal to renew lease must be provided to the tenant a minimum of 30 days before such action is taken.

Exhibit 7-G depicts a model lease agreement form used in the Section 8 Housing Choice Voucher Program, the Tenancy Addendum to the model lease, and a Lease Addendum for Tenant Based Rental Assistance (TBRA). These documents contain prohibited lease provisions, as well as other legal provisions and information that might be useful in administering the lease portion of a tenant-based rental assistance project.

- c. Documentation and Certifications. The documentation and certification items described below must be maintained by the Grantee in accordance with the guidance found in **Chapter 1, PROGRAM START-UP, Section B.5, Establishing HOME Files**.
- **Project** files for tenant-based rental assistance will include all documents that pertain to individual tenants. Each assisted family will require a separate project file because each family will represent a separate project.
 - The Grantee must maintain a copy of the income certification worksheet that was used to determine the applicant's income eligibility, and eligibility as a family, at the time the applicant receives the rental assistance contract. Certification worksheets are maintained in the Grantee's file. (See **Exhibit 7-J**, Final Income Certification.)
 - The Grantee will file copies of documents used to determine reasonable rents, and the calculation of HOME subsidy for each tenant assisted.
 - The Grantee must execute a contract or written agreement between the Grantee and the tenant (for direct payments), or between the Grantee and the landlord/owner (payments on behalf of the tenant). This contract will incorporate the major provisions and rules governing the HOME tenant-based rental assistance program, including but not limited to: family and income eligibility, recertification requirements, length of assistance, property standards, maximum subsidy limits, lease provisions and tenant protections. This contract is maintained in the Grantee's file.
 - The Grantee must obtain and keep copies of any lease agreements between participating tenants and landlords/owners. The lease must not contain any prohibited lease terms, and the terms of the lease must be within the applicable subsidy and time frame parameters. These are maintained in the Grantee's file.
 - The Grantee will maintain copies of annual recertification, whereby family income, size, and composition are re-examined for each tenant. These are also maintained in the Grantee's file.

Refer to the *Management Plan Template* (**Exhibit 14 of the HOME Application Guidelines**) for an outline of specific requirements related to Tenant-Based Rental Assistance.

C. REHABILITATION

1. General Requirements

Rehabilitation projects will involve rental housing or owner-occupied homes or, in some cases, an owner-occupied rental structure. Rehabilitation can be combined with other project activities. For example, a Grantee may rehabilitate a home and include homebuyer assistance. Rehabilitation includes:

- ☐ reconstruction, or building a new structure on the foundation of a previous structure; and
 - ☐ conversion, or changing the use of an existing structure from an alternative use to affordable residential housing.
- a. Period of Affordability. The applicable period of affordability in a rehabilitation project is linked to the amount of HOME funds invested per unit. The time and dollar parameters for rehabilitation are:
- If **under \$15,000** of HOME funds are spent per unit, the minimum period of affordability is **5 years**;
 - If **\$15,000 to \$40,000** of HOME funds are spent per unit, the minimum period of affordability is **10 years**;
 - If **over \$40,000** of HOME funds is spent per unit, the minimum period of affordability is **15 years**.

The period of affordability only applies to the rehabilitation of housing units for rental purposes.

- b. Eligible Rehabilitation Costs. Development hard costs, or the actual costs of rehabilitation, include:
- costs of labor and materials necessary to meet Section 8 Housing Quality Standards;
 - costs to meet rehabilitation standards;
 - essential improvements;
 - energy-related improvements;
 - lead-based paint hazards reduction;
 - improvements for persons with a disability;

- repair or replacement of major housing systems; (e.g., plumbing, heating, and wiring)
 - incipient repairs and general property improvements of a non-luxury nature;
 - demolition costs, when these are a part of a rehabilitation project;
 - site improvements and utility connections; and
 - related soft costs.
- c. Property Standards. Each Grantee must adopt or prepare written rehabilitation standards before HOME funds can be used in any rehabilitation activity. After rehabilitation, the property, at a minimum, must meet local codes, rehabilitation standards, ordinances, and zoning ordinances.

HOME funds may not be provided to primarily religious organizations for any activity, including secular activities. HOME funds also cannot be used for an emergency repair program.

Refer to the *Management Plan Template (Exhibit 14 of the HOME Application Guidelines)* for an outline of specific requirements related to rehabilitation for single-family and multi-family units, respectively.

2. Rental Housing Rehabilitation

The HOME Program allows investment in affordable rental housing rehabilitation to be occupied by low- and very low-income tenants. Project activities involving rental housing might include new construction, rehabilitation of existing structures, or acquisition of existing structures or property. Property standards apply as described under Section II, **GENERAL REQUIREMENTS**.

Prohibited lease provisions apply, as described in Section III of this chapter under **TENANT-BASED RENTAL ASSISTANCE**.

- a. Projects. Eligible projects for rental rehabilitation may include:
- properties scattered on more than one site, are under common ownership, management and financing, and receive HOME assistance as part of a single undertaking (in rural areas, carved out of similar size blocks from the nearest town); or
 - one or more buildings on a single site that are under common ownership, management and financing.

There is no limitation on the number of units eligible per project, and housing units are not subject to preferences for unit size or style. Each project is entered separately into the Integrated Distribution and Information System

(IDIS). Rental housing units can be either privately or publicly owned. Under rental rehabilitation projects, HOME funds may not be used for:

- projects assisted under Title VI of the *National Affordable Housing Act* (prepayment of mortgages insured under the *National Affordable Housing Act*);
- Public Housing projects; or
- Rental Rehabilitation Program funded projects.

b. Affordability. All occupants of HOME-assisted rental housing must have a gross annual income equal to or below 80 percent of the area median income. To qualify as "affordable housing" under the HOME program, rental housing units must meet two target criteria.

☒ Tenant income: At initial occupancy, at least 90 percent of the dwelling units assisted must be occupied by families with annual incomes at or below 60 percent of the median income for the area. Thus, a maximum of 10 percent of the units may be occupied by families with annual incomes from 60 percent to 80 percent of area median income.

☒ Rent target: For on-going occupancy of rental units in projects of five or more units, no less than 20 percent of HOME-assisted units in each project must be occupied by very low-income tenants (households with incomes at or below 50 percent of the median).

What these requirements mean for HOME rental housing programs is simply that units must be occupied by very low-income families (those who are Section 8 eligible). Only a few renters with incomes approaching 60 percent of the median, and even fewer with incomes up to 80 percent of the median can reside in rental housing assisted with HOME program funds.

Long-term controls on rent and occupancy begin upon completion of the HOME rental rehabilitation project, and continue during an affordability period that may be as short as 5 years or as long as 15 years. The period of affordability is based upon the average amount of HOME funds invested per unit.

c. Allowable Rent Costs. In determining the monthly rent that may be charged for a project, Grantees must use the standard High and Low HOME Rent (not to exceed the Fair Market Rent or FMR). If low home rents do not work for your project, contact your Home Program Officer. Both High and Low HOME Rents are established by the Department of Housing and Urban Development (HUD) and can be found in **Exhibit 7-E, Home Program Rents**. An adjustment must be made for utility allowances for cases where the utilities and other housing services (garbage collection) are not included in the rent and are instead the responsibility of the family. Grantees must use the Montana Department of Commerce Utility Allowances for Section 8

Programs for their region (see **Exhibit 7-J**), which are updated annually in October.

Keep the HOME income-targeting requirement in mind when figuring out rents for a project. At least 90 percent of the rental units must benefit families whose incomes do not exceed 60 percent of the area median.

Whether a Grantee is using High and Low HOME program rents or if they are determining monthly rent based on the Annual Income of each tenant, the maximum after-rehabilitation/acquisition/construction **rents cannot exceed the Fair Market Rent (FMR)** established by HUD and found in **Exhibit 7-E**. The Fair Market Rent Schedule may be increased only according to changes in HUD established rents.

- d. Tenants: Rent Schedule and Utility Allowances - The Grantee must review and approve rents proposed by the rental owner for units with "flat rents" (units carrying rents that are the maximum allowed as either a high or low HOME rent). The Grantee must review and approve the monthly allowances, proposed by the rental owner, for utilities and services to be paid by the tenant. The rental owner (or Grantee, depending on the particular project) must reexamine the income of each tenant household living in low- income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the Grantee and MDOC, as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant.

Enforceable agreements are required in the HOME Program under rental rehabilitation. **Table 7-1** lists some special provisions that should be included in enforceable agreements between Grantees and owners or between owners and tenants. After rehabilitation (or new construction) of a rental property, landlords are not free to charge rents according to what the market will bear. They will face ceilings on rent levels, and will be required to screen tenants for family income. Landlords will also be required to report annually to Grantee project management officials on both rents and tenants. These requirements are formalized by creating a legally binding agreement in the form of a deed restriction. See **Exhibit 7-H** for an example of a land use Deed Restriction Agreement for rental properties.

The provisions of the Uniform Relocation Act provide protection for existing tenants. Tenants must be notified of the possible use of HOME funds in the rental project and of any changes in the project at the time the owner applies for the HOME funds. Care must be taken to insure that this notice does not insinuate that the tenant might be asked to move. Grantees must notify their assigned HOME Program Officer before notice is given so that the tenant does not become a "displaced person". Further notice to tenants is required when funds are actually committed to a project. When funds are committed,

tenants must be informed of either their right to remain in the property or apply for relocation assistance. See Chapter 6, **ACQUISITION / RELOCATION**, for additional information.

Table 7-1
HOME Rental Housing Enforceable Agreements

| ITEM | PARTIES TO AGREEMENT | DOCUMENT |
|-----------------------------------|----------------------|---|
| Rent controls | Owner—Grantee | Deed restriction or covenant running with the land |
| Occupancy controls | Owner—Grantee | Deed restriction or covenant running with the land |
| Annual income certification | Owner—Grantee | <ul style="list-style-type: none"> ▪ Written agreement with owner requiring recertification ▪ Annual certification to MDOC that incomes have been checked and meet program requirements |
| Annual rent reviews | Owner—Grantee | <ul style="list-style-type: none"> ▪ Written agreement with owner ▪ Annual certification by Grantee to MDOC that rents are within limits |
| Fair housing | Owner—Grantee | Written agreement with owner |
| Housing quality standards reviews | Owner—Grantee | Written agreement with owner |
| Income reviews | Owner—Tenant | Lease |
| Affirmative marketing | Owner—Grantee | Written agreement with owner |

- e. Tenant Selection. An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that:
- ☐ are consistent with the purpose of providing housing for low- and very low-income families;
 - ☐ are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
 - ☐ give reasonable consideration to the housing needs of families that qualify for federal selection preferences; and
 - ☐ provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and the prompt written notification to any rejected applicant of the grounds for any rejection.
- f. Increases in Tenant Income. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under state or local law or 30 percent of the family's adjusted monthly income, as recertified annually. As unqualified tenants vacate their units, the owner must replace them with low- or very low-income tenants.

- g. Documentation and Certification requirements for rental housing parallel the requirements for tenant-based rental assistance, with some important additions. The following should be included (as applicable) in the Grantee's file:

- ☐ Property Standards: Documents demonstrating that the rental property meets required property standards of 24 CFR §92.251 and the lead-based paint requirements in 24 CFR §92.355 upon project completion.
- ☐ On-Site Inspections: During the period of affordability, the HOME Program must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of 24 CFR §92.251 and to verify the information submitted by the owners in accordance with the requirements of 24 CFR §92.252 no less than:
 - **Every three (3) years** for projects containing **1 to 4 units**;
 - **Every two (2) years** for projects containing **5 to 25 units**; and
 - **Every year** for projects containing **26 or more units**.

Inspections must be based on a sufficient sample of units.

- ☐ Documents showing the annual recertification of tenant income
- ☐ Annual review of rent and utility allowances
- ☐ Documents demonstrating that the rental project meets affordability and tenant income benchmark for each family assisted; and
- ☐ Records demonstrating compliance with the Lead-Based Paint Poisoning Prevention Act (as applicable).

Grantee files will include, as applicable, the agreement between the Grantee and the assisted family, and copies of any work write-ups, bids, contracts, permits, and inspection reports. Tenant files must be kept on-site at the property unless there is no on-site manager.

Refer to the *Management Plan Template* (**Exhibit 14 of the HOME Application Guidelines**) for an outline of specific requirements related to Multi-Family Rentals.

3. **Owner-Occupied Rehabilitation**

Owner-occupied rehabilitation projects are similar in some respects to rental rehabilitation projects, and significantly different in others. Owner occupied rehabilitation is not subject to a period of affordability. However, the intent of the HOME program is to have housing remain affordable. Grantees are encouraged to

impose affordability restrictions regarding the sale or rental of property that has been rehabilitated under the HOME Program.

Rehabilitation of single family, owner-occupied housing must meet the requirements outlined below:

- a. Income. To be considered eligible to participate in HOME owner-occupied rehabilitation, a homeowner must have annual gross income that does not exceed 80 percent of the area's median income. When determining family income, the Grantee will use the definition of "annual income" as defined under the Section 8 Housing Assistance Payments programs (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets).
- b. Property Ownership. The homeowner must own the property and must occupy the property as his or her principal residence. A family or individuals own the property if they:
 - ☐ have fee simple title; or
 - ☐ maintain a 99-year leasehold interest; or
 - ☐ have ownership or membership in a cooperative; and
 - ☐ do not have any restrictions or encumbrances that would unduly restrict the good and marketable nature of the ownership interest.

Properties considered for owner-occupied rehabilitation must qualify as single-family properties. HOME guidelines define single-family properties as:

- ☐ a one- to four-unit property;
 - ☐ a condominium unit;
 - ☐ a combination of manufactured housing and lot; or
 - ☐ a cooperative unit.
- c. Amount of Assistance. The amount of HOME assistance needed will be guided by the applicable rehabilitation standards and the ability of homeowners to repay the rehabilitation loans (as applicable). The income of individual homeowners and the total monthly payment they can afford will guide the levels of assistance provided. Both interest rates and repayment terms have a significant impact on affordability. Conventional home improvement loans generally do not allow for adjustments in interest rates and have short terms (typically 5 to 10 years). By adjusting either the term or the interest rate of loans, HOME rehabilitation projects can accommodate a wider range of homeowners. Small changes in the loan's term provide more affordability than small changes in its interest rate.

Under the HOME Program, Grantees may choose to customize their loan products to meet the individual needs of borrowers. Adjustment to terms and interest rates may be customized to individual homeowners or established by category to meet the needs of anyone within a particular income range.

- d. Property Value. The value of the HOME assisted property after rehabilitation must not exceed 95% of the median purchase price for the area (see Part II of **Exhibit 7-A, Montana's Mortgage Limits**).
- e. Minimum Investment. The minimum amount of HOME funds used for homeowner rehabilitation is \$1,000 per unit assisted. It is possible that due to leveraging of public or private monies, a project will have a high rehabilitation cost but a low HOME investment. For example, if a \$5,000 single-family rehabilitation project included \$950 of HOME funds and \$4,050 in funds from other sources, the minimum per unit HOME investment requirement would not be met.
- f. Maximum per unit subsidies. The maximum per-unit subsidy of HOME funds permitted per unit for a single-family rehabilitation is the maximum subsidy amount set for all HOME assisted activities (see Part I of **Exhibit 7-A, Maximum Per Unit Subsidy Limits**).
- g. Period of Affordability. Homeowner rehabilitation does not require a period of affordability; **however, the HOME Program does promote affordability restrictions set by the Grantee regarding resale or rental provisions attached to the Homeowner/Grantee Loan Agreement.**

Refer to the *Management Plan Template* (**Exhibit 14 of the HOME Application Guidelines**), or the **Single-Family Pilot Program Qualification Package** (available on the HOME website) for an outline of the requirements related to Homeowner Rehabilitation.

D. ACQUISITION

HOME funds may be used for the acquisition of improved or unimproved real property. HOME acquisition activities can be directed to:

- ☐ vacant land, in relation to a particular housing project intended to provide affordable housing and for which funds for construction have been committed;
- ☐ any combination of a manufactured home and a lot on which a manufactured home will be placed;
- ☐ existing housing structures or structures that will be converted to housing after rehabilitation;
- ☐ new construction, provided the housing has received an initial certificate of occupancy or equivalent document within a one-year period before HOME funds are committed to the project.

a. Property Standards

- ☐ **Acquisition Only.** The housing must meet all applicable local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.
- ☐ **Acquisition and Rehabilitation.** The housing must be free from any defects that could pose a danger to the health or safety of occupants before it is transferred to a homeowner (within 6 months of transfer of ownership). The housing must meet the property standards in 24 CFR §92.251 no later than two (2) years after transfer of the ownership interest.
- ☐ **Rehabilitation.** The housing must meet accessibility requirements of the Fair Housing Act and Section 504 as well as: local housing codes, ordinances, rehabilitation standards, and zoning ordinances. If no local standards exist, Uniform Building Code (ICBO), National Building Code (BOCA), Standard Building Code (SBCCI), Council of American Building Officials One to Two Family Code (CABO) or FHA Minimum Property Standards (MPS) must be met.

If this is a rental unit, it must meet Section 8 Housing Quality Standards.

Refer to the *Management Plan Template (Exhibit 14 of the HOME Application Guidelines)* for an outline of specific requirements related to Single-Family and Multi-family Acquisition.

E. HOMEBUYER ASSISTANCE

Homebuyer Assistance is considered part of Acquisition. Homebuyer projects may supply downpayment and closing cost assistance through a deferred payment loan, partially or fully forgivable, and with or without an interest rate mechanism. The HOME Program requires a **recorded Deed Restriction** on each house to ensure resale restrictions are enforced. Contact your HOME Program Officer for additional information regarding a recorded deed of trust.

- a. Eligibility Criteria. The prospective purchaser household must meet two requirements in order to participate in the Homebuyer program.
- ☐ The purchasing household must be low income at either the time the household initially occupies the property, or at the time HOME funds are invested, whichever is later. The HOME Program recommends that homebuyers spend approximately 30 percent of their monthly income for housing expenses including principle, interest, taxes, and insurance. Verification of income eligibility is good for a period of 6 months. See **Exhibit 7-I** for final income verification.

- ☐ The purchaser household must use the property as its principal residence. To guarantee adherence to this criteria, the deed should incorporate this residency requirement. The loan documents (such as a promissory note between the purchaser and the Grantee) should also incorporate this requirement. Temporary subleases are not allowed.
- b. Eligible Property Types. Property can be privately or publicly held before its sale to a homebuyer; however, it must be free from encumbrances. The property can be an existing structure or one that is newly constructed. It must serve as the purchaser's principal residence. Eligible property types include:
- ☐ a single family property (one unit);
 - ☐ a two- to four-unit property (rent controls will apply to the second through fourth units);
 - ☐ a condominium unit;
 - ☐ a manufactured home (all types of non-motorized manufactured housing units, including mobile homes with permanent foundations and hook-ups to sewer and water); and
 - ☐ a cooperative unit.
- c. Form of Ownership. For purposes of the HOME Program, homeownership means ownership in fee simple title, a 99-year leasehold interest in a one- to four-unit dwelling or condominium unit, ownership or membership in a cooperative, or an equivalent form of ownership approved by MDOC. The ownership interest may be subject only to the following:
- ☐ mortgages, deeds of trust or other debt instruments approved by MDOC;
 - ☐ HOME Program restrictions on resale that insure affordability or other program requirements;
 - ☐ any other encumbrances or restrictions that do not impair the marketability of the ownership interest;
 - ☐ homeownership under a lease-purchase agreement must occur within thirty-six (36) months.
- Any forms of ownership not clearly specified above must be approved by MDOC (with HUD approval).
- d. Property Value. The purchase price of a HOME-assisted property for a homebuyer (at the time of acquisition, with or without rehabilitation) must not exceed the FHA 203(b) mortgage limit for the area for the type of housing being purchased (single family, condominium; duplex, 4-plex, etc.). This means that it cannot exceed 95% of the area median purchase price for the type of housing being purchased. The current maximum mortgage limits are contained in Part II of **Exhibit 7-A**.

Some projects may feature acquisition and rehabilitation of homes for homebuyers.

Where **rehabilitation** is required to bring the housing up to all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances or rental property up to Section 8 Housing Quality Standards, the purchase price of the property after rehabilitation cannot exceed the applicable *Mortgage Value Limits* found in Part II of **Exhibit 7-A**. The after-rehab value estimates should be completed before occupancy or investment of HOME funds. The appraisal of fair market value, if performed by a third party, is an eligible soft cost.

HOME regulations do not prescribe a minimal acceptable appraisal format. Unofficial estimates of value performed by the local government agency or non-profit would not be acceptable. However, drive-by appraisals which include a property description and the sale prices of at least 3 comparable properties performed by a licensed appraiser, title company or other qualified entity will be acceptable. **NOTE:** Inspections, including inspections using the form in **Exhibit B**, do NOT substitute for an appraisal.

1. **Resale/Recapture Restrictions and Long-Term Affordability**

Proceeds from the sale of a HOME-assisted property sold within the affordability period must be distributed according to a resale or recapture option according to 24 CFR 92.254(a)(5) and described in this section.

It is the intent of MDOC to recover the HOME investment under all circumstances unless the **net proceeds** from the sale of a home, whose owner has been assisted with the HOME funds, is not sufficient to recapture the full HOME investment. The Grantee will have to choose one of the options, either recapture or resale, to use in their program and remain consistent in its use with all assisted persons. If the funds from the sale of a property are insufficient to cover repayment of all HOME funds, neither the MDOC nor Grantee are required to make up this deficiency. However, any HOME funds that are recaptured will be used to assist other HOME-eligible activities.

- **Resale:** The purpose of this option is to ensure that the assisted housing unit will remain affordable to the **subsequent homebuyer**.

The resale provisions of 24 CFR §92.254(a)(5) will be applied, requiring program participants to use the following provisions:

- a. **Affordability.** Housing is affordable if the purchaser's monthly payments of principal, interest, taxes, and insurance do not exceed 30 percent of the gross income of a family with an income equal to 80 percent of median income for the area, as determined by HUD, with adjustments for smaller and larger families.

Housing purchased through the Homebuyer Assistance Program that is subsequently sold within the HOME-required period of affordability will be sold to

another low-income family who must use the property as their principal residence. The Grantee may select a period of affordability greater than that established by HOME. Subsequent buyers who purchase the property within the affordability period will start a new period of affordability if an infusion of new HOME funds is required to make the unit affordable.

Affordability to the **subsequent homebuyer** will be assured through a shared allocation of funds from the resale, according to the policies and procedures proposed by the Grantee in their Program Income Plan and approved by the HOME Program. To make the resale unit affordable, the Grantee will apply funds in the following order:

- 1) Funds returned to the Grantee from the sale, reimbursing HOME-funded down payment and closing cost assistance; then
- 2) Funds returned to the Grantee from the sale as the share of appreciation. The allocated amount of appreciation is to be determined by the Grantee and is subject to HOME Program approval; then
- 3) The Grantee may use new HOME funds to make it affordable.

The Grantee will ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land or a similar mechanism to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of a FHA insured mortgage to HUD. The Grantee may exercise purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

- b. Proceeds. If the Grantee's share of appreciation and reimbursement of HOME down payment and closing cost funds accomplishes affordability for the homebuyer during the period of affordability, any excess funds left after affordability has been accomplished shall be used for other HOME-eligible activities.

Fair return to the **seller** will be accomplished within the net proceeds from sale as follows:

- 1) Any outstanding loan balances from the first and/or second mortgages will be repaid; then

- 2) HOME financed down payment and closing cost amounts will be returned to the Grantee; then
- 3) Any remaining funds are divided between the Grantee and the seller according to the policies adopted by the Grantee in their Program Income Plan and approved by the HOME Program.

➤ **Recapture:** The purpose of this option is to **recapture** the full HOME investment out of the net proceeds available (sale price minus closing costs and any non-HOME loan repayments) if the HOME-assisted house is sold or transferred within the affordability period, and to assist other HOME-eligible projects, except as provided below. The Grantee may modify or design its own recapture policy, subject to approval by the HOME program. The policy adopted by the Grantee must be applied consistently to all participants receiving HOME assistance under the Grantee's HBA program.

- a. **Affordability:** The persons assisted under the Homebuyers Assistance Program with HOME funds obtained through the recapture of a HOME investment or through the initial investment of HOME funds will be subject to all the requirements and restrictions set out in 24 CFR Part 92.
- b. **Recapture Requirements:** The recapture provisions provided in the contract between the Grantee and the assisted homeowner will ensure recapture of the HOME investment subject to repayment. The HOME investment subject to repayment is the HOME subsidy that directly enabled the homebuyer to purchase an eligible property, plus any deferred interest (if the Grantee provides HOME funds as an interest-bearing loan) but excluding any forgiven HOME investment. Recapture is required if the assisted house is sold or transferred within the required affordability period. The grantee may set an affordability period greater than that required by HOME.

Grantees must set their recapture policies based on net proceeds available. HUD has determined that, in the event of a foreclosure, Grantees that have not set their recapture policies based on net proceeds available must repay the HOME investment back to the U.S. Treasury. Setting recapture policies based on net proceeds available will allow a Grantee to collect as much of the HOME investment as is available, while preventing repayment by the Grantee in the event of foreclosure.

The Grantee must develop a policy for treatment of excess proceeds. Excess proceeds are any net proceeds remaining after recapture of the HOME investment and coverage of the homeowner's investment (down payment, and eligible capital improvements made since purchase). The Grantee may allow the homeowner to retain all of the excess proceeds or they may be shared between the homeowner and the Grantee according to an Equity Share policy approved by the HOME Program.

- c. Optional Recapture Provisions: The following options for recapture requirements are acceptable to the HOME Program. The grantee may modify or design its own recapture policy, subject to approval by the HOME program. The policy adopted by the Grantee must be applied consistently to all participants receiving HOME assistance under the Grantee's HBA program.

- 1) *Equity Share*: The Grantee may develop an equity share policy, subject to approval by the HOME program, to address the treatment of excess proceeds from the sale of an assisted house. Excess proceeds are any net proceeds remaining after recapture of the HOME investment and coverage of the homeowner's investment (down payment and eligible capital improvements made since purchase).

The Grantee should consider that, in some cases, such as a brief period of ownership or limited homeowner investment, the Grantee may be justified in capturing most or all of the excess proceeds. The Grantee might also design its equity share policy to allow homeowners to keep excess proceeds from the sale of an assisted house when the excess proceeds do not surpass a pre-determined threshold.

Some options for an equity share formula include:

- Sharing equity according to the ratio of HOME investment to initial purchase price, or according to the following formula presented below under Number 2, *Insufficient Proceeds*;
 - Tying the formula to an economic index, cost-of-living, interest rates, or some other market factor;
 - Sharing equity as a fixed amount or percentage of the property's appreciation.
- 2) *Insufficient proceeds*: The Grantee may choose to adopt one of the following two options for the treatment of net proceeds in the event they are insufficient to repay the entire HOME investment and the homebuyer's investment (downpayment, principal payments, and eligible capital improvement investments made by the owner since purchase). The Grantee may opt for one of these options in response to market conditions and the needs of potential purchasers to allow homeowners to recover some of their investment. If the Grantee chooses to include one of these options in its recapture policy, it must be applied consistently to all participants receiving HOME assistance under the Grantee's HBA program.

Option #1: Net proceeds may be divided proportionally as set forth in the following formula:

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net Proceeds} = \text{GRANTEE SHARE}$$

$$\frac{\text{homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net Proceeds} = \text{HOMEOWNER SHARE}$$

Example: A homeowner receives \$10,000 in HOME downpayment/closing cost assistance. She invests \$5,000 in her home (\$3,000 in downpayment and \$2,000 in eligible capital improvements made on the home). When she sells the house, there is \$11,000 in net proceeds. The amount of HOME investment to be recaptured equals:

$$\text{GRANTEE SHARE} = \frac{\$10,000}{\$10,000 + \$5,000} \times \$11,000 = \underline{\$7,333}$$

The seller receives the balance of the proceeds, or \$3,667 (\$11,000 - \$7,333).

Option #2: The homebuyer's investment (down payment and any capital improvement investments made by the owner since purchase) may be repaid in full before any HOME investment is recaptured. The HOME subsidy is then repaid to the extent that proceeds are available.

Example: From the \$11,000 net proceeds, the homeowner receives her entire \$5,000 investment and the Grantee receives the balance, or \$6,000 of the initial \$10,000 HOME investment.

- 3) *Forgiveness:* Much, if not all, of the potential problem of insufficient net proceeds may be eliminated if the Grantee elects to forgive all or a portion of the HOME investment. However, the decision to forgive should be made at the program design stage to consider local housing market conditions and the needs of potential purchasers. The following two options are acceptable to the HOME Program:

Option #1: The Grantee may choose to forgive the HOME investment if a homeowner owns and occupies the unit for the required affordability period, but require repayment in full if the home is sold before the affordability period has expired.

Example: A homebuyer receives \$10,000 in HOME downpayment assistance, triggering a 5 year affordability period. If she decides to sell at any time during the affordability period, the HOME investment must be repaid. If she sells after year five, the HOME investment is forgiven.

Option #2: Alternatively, the HOME investment amount may be forgiven on a pro rata basis according to the time the homeowner has owned and occupied the unit measured against the required affordability period:

Example: If the homebuyer decides to sell after year two, two-fifths, or \$4,000, of her deferred payment loan is forgiven. Her HOME loan balance subject to recapture is \$6,000, to be repaid from the net proceeds of the sale.

- 4) **Capital Improvements:** The calculation of the homeowner's investment shall be adjusted to include the cost of eligible capital improvements made by the owner since purchase. The Grantee will establish its capital improvements policy to meet one of the following two options and to include the eligible capital improvements that follow. The Grantee may modify or design its own capital improvements policy, subject to approval by the HOME program.

Option #1: The Grantee may determine the homeowner's capital improvement investment based upon the actual cost of the improvements. Assisted homeowners that want to receive credit for eligible improvements must notify the Grantee prior to initiating the work, and provide to the Grantee copies of all documentation to support the cost of the improvement (receipts for materials, or contractor invoices and receipts of payment). For improvements installed by the homeowner, the cost of eligible capital improvements will exclude labor. When the improvement is completed, the Grantee and assisted homeowner must agree to the final cost of the improvement. The agreed upon amount will determine, along with the cost of other eligible capital improvements documented by the Grantee, the homeowner's investment at time of sale.

Option #2: The Grantee may determine the homeowner's capital improvement investment based upon the appraised value, or such amount as may be agreed upon by the Grantee and homeowner, of eligible capital improvements at the time of sale. Assisted homeowners that want to receive credit for eligible improvements must still notify the Grantee prior to initiating the work. At the homeowner's expense, the value of capital improvements will be determined by a mutually acceptable and duly licensed Appraiser.

Grantees must ensure assisted homeowners are aware of what capital improvements will be eligible, how the improvement will be priced, and what obligations the homeowner has for notifying the Grantee in advance of initiating work. The Grantee must have the assisted homeowner sign a statement of acknowledgment accepting the capital improvements policy.

Eligible capital improvements may be determined by the Grantee with the approval of the HOME Program, but at minimum must include the following:

Any addition of livable interior space or building component. Such capital improvements include a building addition; finishing a basement; finishing attic space; installing central air conditioning; adding or expanding a porch or deck; adding a garage or carport; and converting an existing carport into an enclosed garage.

Improvements necessary to correct code deficiencies or improve energy conservation. Such capital improvements include replacing or modifying noncompliant components, such as wiring or plumbing, to meet current code; increasing insulation (in new units, insulation must exceed current Montana Energy Code standards to qualify); and replacing windows and heating systems with Energy Star-rated units.

2. Special Considerations for Single-Family Properties with More Than One Unit

If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single-family housing containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit.

If HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units in the single-family housing, the affordability requirements of 24 CFR §92.252 (Rental Housing) apply to assisted rental units, except that MDOC may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single family housing.

If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of MDOC, upon recapture of the HOME investment. (If HOME funds are used to assist only the rental units in such a property then the requirements of Rental Housing would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of 24 CFR §92.254.)

3. Lease-Purchase

HOME funds may be used to assist homebuyers through lease-purchase programs. A homebuyer must purchase the housing within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed and at the time the housing is transferred if more than six months have elapsed since the grantee determined that the family was income eligible.

If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in 24 CFR §92.252 (Rental Housing) shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

- *The affordability period will be suspended upon foreclosure by a lender or other transfer in lieu of foreclosure, if the foreclosure by a lender or other transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability.*
- After the period of affordability, the property may be sold at any price to any new homebuyer, without consideration of the purchaser's income.

4. Enforcing Homebuyer Provisions

There are two provisions related to homebuyer programs that will require a means of enforcement:

- use as a principal residence; and
- resale/recapture restrictions.

A deed or mortgage covenant, deed restriction, covenant running with the land, lien, or other similar mechanism, must be used to ensure that the homebuyer criteria are enforced. In addition, the Grantee should consider using the following options as a means of assuring compliance with the principal residence and resale provisions:

- First Right of Purchase. Should the homebuyer wish to sell the property, the Grantee retains the right to purchase the property based upon a formula. The right of purchase can be included as a deed covenant, or it can be executed and recorded as a separate document.
- Right of First Refusal. The Grantee can exercise the right to purchase the homebuyer's property or it can waive the right to purchase. This can also be executed as a deed covenant or as a separate recorded document.
- Subsidy Mechanisms. The Grantee can structure the HOME investment as a due-on-sale deferred loan (fully repayable or fully or partially forgivable) or as an amortized loan. The Grantee may provide HOME funds as an interest-bearing loan, or at zero interest.
- Equity Sharing. The Grantee in effect becomes a co-owner of the property. Direct involvement in subsequent transfer of the property is thus assured, permitting the Grantee to comply with resale provisions and recover an appropriate share of the appreciated value of an assisted house.

5. Documentation and Certification

The items listed below represent the minimum documentation and certification requirements for inclusion in each homebuyer project.

- Documents certifying each purchaser's eligibility as a qualified homebuyer.

- Documentation that each homebuyer has completed the HOME Program-approved home ownership training course.
- For subsequent purchasers, records demonstrating that affordability requirements are met for each homebuyer assisted.
- Records certifying that the property meets required property standards.
- As applicable, documents demonstrating compliance with the provisions of the Lead-Based Paint Poisoning and Prevention Act.
- Copies of any documents used to secure resale and affordability provisions (i.e., deed covenant, deed restriction, covenants running with the land, etc.).
- Records of appraisals and computations used to determine property value for each homebuyer assisted.
- Separate files for each unit assisted. Each file will include the contract between the Grantee and the assisted family, and copies of all work write-ups, contracts, permits, and inspection reports.
- A copy of the agreement for the acquisition of the property (buy-sell).

6. **Converting Rental Units to Homeownership Units for Existing Tenants**

The grantee may permit the owner of HOME-assisted rental units to convert the rental units to homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of 24 CFR §92.254. If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a minimum period of affordability equal to the remaining affordable period if the units continued as rental units. If additional HOME funds are used to directly assist the tenants to become homeowners, the minimum period of affordability is the affordability period under 24 CFR §92.254(a)(4), based on the amount of direct homeownership assistance provided.

Refer to the *Management Plan Template* (**Exhibit 14 of the HOME Application Guidelines**), or the **Single-Family Pilot Program Qualification Package** (available on the HOME website) for an outline of specific requirements related to Homebuyer Assistance.

EXHIBITS

- 7-A Part I: Maximum Per Unit Subsidy Limits for Rental New Construction and Rehabilitation Projects
 Part II: Maximum Mortgage Limits for Rehabilitation and Homeownership Programs
- 7-B Housing Inspection Form
- 7-C *Reserved*
- 7-D Adjusted Income Limits Table
- 7-E HOME Program Rents
- 7-F Part I: Summary of Family Income Data
 Part II: Calculating Adjusted Income
- 7-G Model Lease for Housing Choice Voucher
 Tenancy Addendum Section 8 Tenant Based Housing Choice Voucher Program
 Lease Addendum HOME Program Tenant Based Rental Assistance
- 7-H Deed Restriction Agreement
- 7-I Final Income Certification
- 7-J Utility Allowances